HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

WRIT PETITION No.16102 of 2003

Date: 08-08-2007.

Between :

Poosapati Narayana Murthy Raju.

.....Petitioner

And

The Vizianagaram District Co-operative Central Bank Limited,
Vizianagaram, rep. by its General Manager & others.

.....Respondents.

HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

WRIT PETITION No.16102 of 2003

ORDER :

The petitioner borrowed certain amount from the 3rd respondent-Society and thereafter, purchased a Tractor bearing No.AP-35-T-1629. In lieu thereof, the petitioner mortgaged an extent of 14 acres of land situated in Survey Numbers 24 and 119 of Jonnavalasa by creating 1st charge in favour of the 3rd respondent-Society. Thereafter, the petitioner also entered into an agreement on 26th of April 1993, promising to repay the said amounts and as per Clause 4 of the said agreement, in case of default by the borrower of any one or more instalments due under the said mortgage bond, the 3rd respondent-Society shall have power to take possession of the Tractor and its implements and sell them without the intervention of the Court by public auction or private contract and to realise the amount due to the Society. According to the petitioner, though there were no arrears,

the 2nd respondent un-authorizedly seized the said Tractor on 05.03.2003 and hence it necessitated him to approach this Court by filing the present writ petition.

A counter affidavit is filed on behalf of the 1st and 2nd respondents, wherein it is stated that because of the agreement entered into between the petitioner and the 3rd respondent-Society, and as per condition No.4 of the said agreement, which enables the 3rd respondent-Society to seize the vehicle, the said vehicle is seized.

Heard learned counsel for the parties.

The main contention of the learned counsel for the petitioner Mr.D.V.Nagarjuna Babu is that none of the respondents get power under Section 94 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') and the said action of seizing the Tractor is wholly without jurisdiction. However, the learned counsel for respondents submitted that the 3rd respondent-Society is financed by the 1st respondent-Bank, and as the 1st respondent-Bank is the financing Bank and since the petitioner himself has executed a mortgage deed mortgaging some of the landed property, the 1st respondent-Bank got power under Section 94 of the Act, and also as there is an agreement between the parties which enables the respondents to seize the said Tractor, it was seized.

It is not necessary for this Court to go into the aspect as to whether the respondents get power under Section 94 of the Act or not. Evidently, the petitioner executed a deed of mortgage, mortgaging an extent of 14 acres of land, creating 1st charge in favour of the 3rd respondent-Society. Further, the petitioner also entered into an agreement wherein a clause permitting the 3rd respondent-Society to seize the vehicle, is incorporated.

Having considered the entire material on record, this Court is of the view that the very purpose of mortgaging a property is to save the interests of the mortgagee i.e. in the event of default or in the event of failure of payment of any of the amounts by the mortgagor, the mortgagee can put the said mortgaged property for sale and thus recover the said amount due. Once there is a mortgage, there is no necessity for the parties to enter into further agreement and further incorporating such a clause that the said Tractor can be seized and put to sale for realisation of the amount due. When similar case came up for debate before a Division-Bench of this Court in **V. Venkateswar Rao v. The Agricultural Development Officer**[1], this Court held that the Tractor is not liable for attachment for non-payment of instalments of loan amount. In para 10 of the said judgment, the learned Judges held as follows—

"Juding the sweep and width of this rule, it should be

mentioned that the language of this Rule is wide enough to cover every case of attachment under the A.P. Co-operative Societies Rules. The words 'attachment or sale' under these Rules are wide enough to have that affect and would ensure exemption to all the movable properties of the agriculturists from attachment and sale provided that those items of movable properties enjoy similar immunity under Section 60, C.P.C. By incorporating all those movable properties which are immune from attachment under the proviso to Section 60 of the Code of Civil Procedure, Rule 52 of the Rules grants similar exemption to, among other things, 'implements of husbandry' of an agriculturist. In view of our finding that Rule 52(5)(o) grants general immunity to all sales and attachments under the Rules, we have to hold that a tractor is immune from being attached and sold for the realisation of the present debts provided it is shown that the tractor is an implement of husbandry of an agriculturist within the meaning of the proviso to Section 60 C.P.C."

From the above, it is clear that the action of the respondents in seizing the petitioner's Tractor bearing No.AP-35-T-1629 on 05.03.2003 is arbitrary and illegal.

According to the petitioner, the Tractor was seized by the 2nd respondent on 05.03.2003. Immediately thereafter, he approached this Court and filed this writ petition and this Court, while issuing Rule Nisi on 04.08.2003, directed the respondents to release the Tractor forthwith, pending disposal of the writ petition. Despite the said interim orders, as the vehicle was not released, the petitioner was constrained to move this

Court by filing Contempt Case No.1190 of 2003 and this Court, on 11.11.2003, observed as follows—

> *"Having heard the learned Counsel for the petitioner as well as the respondents at length, this Court finds that there does not exist any justification or basis for the respondents in not releasing the Tractor, which was directed to be released through order dated 04.08.2003. Mere filing of an application for vacating the order and leaving the matter at that, cannot be an excuse for the continued disobedience of the orders of this Court. Further, the vacate application is said to have been filed only on 15.10.2003. Hence, the respondents are directed to appear before this Court on 17.11.2003. In case the respondents release the Tractor, they do not have to appear before this Court".*

Pursuant to the said order, it appears that the Tractor was released and the Contempt Case was closed on 04.12.2003. While closing the Contempt case, this Court observed that if the petitioner has any grievance, he could file an application in the writ petition, claiming damages for the continued and unauthorized detention of his vehicle by the respondents. In the light of the said observations made by this Court, the petitioner filed W.P.M.P.No.1605 of 2005, seeking amendment of the writ prayer and also for payment of compensation of an amount of Rs.50,000/- for detaining the vehicle for a period of ten months i.e. from 05.03.2003 to 15.01.2004 and causing damage to the said vehicle. This amendment petition was ordered on 04.02.2005.

The only ground urged by the learned counsel for respondents in not releasing the vehicle pursuant to the orders dated 04.08.2003 is that they filed an application seeking vacation of the said interim orders dated 04.08.2003. In fact, the said application seeking vacation of the interim orders was filed only on 15.10.2003 i.e. about 2 ½ months after passing of the orders. This clearly indicates that the respondents have no respect for the orders of the Court. In fact, the respondents should have been punished in the contempt case filed by the petitioner, but however, as the same is closed and the petitioner has come forward to receive the compensation, the respondents are hereby directed to pay compensation of Rs.10,000/- (Rupees ten thousand only) to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is at liberty to prosecute other remedies that are available under Law.

Writ petition is allowed accordingly.

GOPALAKRISHNA TAMADA, J

8th August 2007

ajr

[1] 1987 (2) ALT 78